



California Regional Water Quality Control Board Lahontan Region



Full

Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

April 15, 2009

Sarbjit S. Kang
Kang Property, Incorporated
Swiss Mart Gas Station
913 Emerald Bay Road
South Lake Tahoe, CA 96150

PROCESS SERVER

RESCISSION OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R6T-2008-0021 AND ISSUANCE OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R6T-2009-0015

SWISS MART GAS STATION, 913 EMERALD BAY ROAD, SOUTH LAKE TAHOE, EL DORADO COUNTY

This letter rescinds Administrative Civil Liability Complaint No. R6T-2008-0021, issued to Mr. Sarbjit S. Kang and the Kang Property, Incorporated, on December 19, 2008.

Enclosed please find Administrative Civil Liability Complaint (Complaint) No. R6T-2009-0015 against Kang Property, Incorporated and Mr. Sarbjit Kang (together "Dischargers") for failure to comply with requirements of Cleanup and Abatement Order No. R6T-2007-0029. The Complaint recommends the Water Board impose a civil liability of \$460,300 for these violations.

Waiver of Hearing

Pursuant to Water Code section 13323, the Water Board will hold a hearing on the Complaint no later than 90 days after it is served. The Dischargers may elect to waive their right to a hearing before the Water Board and agree to pay the proposed liability. Waiver of the hearing constitutes admission of the validity of the allegations of violation in the Complaint and acceptance of the assessment of civil liability in the amount of \$460,300 as set forth in the Complaint. If the Dischargers wish to exercise this option, it must complete the following:

1. **By 5:00 p.m., May 21, 2009**, an authorized agent must sign the enclosed waiver and submit it to the Water Board, along with cashier's checks in the amount of \$282,500 made payable to the "State Water Pollution Cleanup and Abatement Account" and \$177,800 made payable to the "State Waste Discharge Permit Fund";
2. **By May 26, 2009**, the Dischargers must publish the enclosed public notice in the Tahoe Daily Tribune; and

California Environmental Protection Agency



Recycled Paper


3. **By 5:00 p.m., May 29, 2009**, the Dischargers must submit verification to the Water Board that the enclosed public notice has been published.

Please note that the Dischargers' waiver and agreement to pay the proposed liability constitutes a proposed settlement that will not become final until after a 30-day public comment period, as provided by the State Water Resources Control Board Water Quality Enforcement Policy (version dated February 12, 2002). As described in the enclosed waiver, the Water Board Assistant Executive Officer may withdraw the Complaint, return payment and issue a new complaint should new information be received during the comment period. If no information is received which causes to the Assistant Executive Officer to withdraw the Complaint, the settlement will be brought before the full Water Board for approval at a future meeting. **The settlement will not be effective until approved by the Water Board.**

Public Hearing

Alternatively, if the Dischargers elect to proceed to a public hearing, a hearing is tentatively scheduled to be held at the Water Board meeting on July 8-9, 2009. The meeting is scheduled to convene at a time and location as announced in the Water Board meeting agenda. The agenda will be issued at least ten days before the meeting and will be posted on the Water Board web page at <http://waterboards.ca.gov/lahontan>. At that time, the Water Board will accept testimony and public comment and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial civil action.

Please contact State Water Resources Control Board Office of Enforcement Attorney David Boyers at (916) 341-5276 or Ms. Lisa Dernbach at (530) 542-5424 or via e-mail at ldernbach@waterboards.ca.gov if you have any questions concerning this matter.



Robert S. Dodds
Assistant Executive Officer

Enclosures: 1. Complaint No. R6T-2009-0015
2. Waiver of Public Hearing Form
3. Public Notice of Waiver

cc: Harold J. Singer, Executive Officer/Water Board
David Boyers, Senior Staff Counsel/SWRCB, Enforcement
David Coupe, Staff Counsel/SWRCB
Swiss Mart mailing list

LSD/T: Swiss Mart Complaint Transmittal Let 4-14-09
[File: UGT, El Dorado County, 6T0297A]





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STATE OF CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD LAHONTAN REGION

In the Matter of Sarbjit S. Kang and
Kang Property, Incorporated:
Violation of Cleanup and Abatement Order (CAO)
No. R6T-2007-0029, Swiss Mart Gas Station,
913 Emerald Bay Road, South Lake Tahoe,
El Dorado County

) COMPLAINT NO.
) R6T-2009-0015
) FOR ADMINISTRATIVE
) CIVIL LIABILITY

SARBJIT S. KANG AND KANG PROPERTY, INCORPORATED, YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are charged with violating provisions of law and regulations for which the California Regional Water Quality Control Board, Lahontan Region (Water Board) may impose administrative civil liability pursuant to Water Code section 13350, subdivision (a)(1) and Water Code section 13268, subdivision (a)(1).
2. Unless waived, a hearing on this matter will be held before the Water Board within 90 days following the issuance of this Complaint. Sarbjit S. Kang and Kang Property, Inc., or their representative(s), will have an opportunity to address and contest the allegations in this Complaint and the imposition of civil liability by the Water Board.
3. At the hearing, the Water Board will consider whether to affirm, reject, or modify (either increase or decrease) the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.

ALLEGATIONS

4. The Swiss Mart Gas Station ("Facility") is located at 913 Emerald Bay Road in the City of South Lake Tahoe, El Dorado County, as shown in Attachment A of this Complaint.
5. Kang Property, Incorporated, is the property owner of the Facility, on record with El Dorado County (APN 023-181-19-10). Sarbjit S. Kang is the operator of the underground storage tanks at the Facility, according to El Dorado County Department of Environmental Management. Both Sarbjit S. Kang and Kang Property, Inc. are identified in CAO No. R6T-2007-0029 as the parties responsible for complying with the CAO. For the purposes of this Complaint, these two parties will be hereinafter referred to as the "Dischargers."



6. Sarbjit S. Kang and other parties were the subject of CAO No. 6-98-78 issued in 1998 and an amendment issued in 1999 for petroleum releases at the Facility adversely affecting groundwater quality, a municipal well, and two domestic wells in the area. Between 1999 and 2007, Sarbjit S. Kang and the other parties had a sporadic record of compliance with Amended CAO 6-98-78A1. Six Notices of Violation were issued to the responsible parties for failing to continuously operate the remediation system and/or conduct quarterly groundwater monitoring and reporting.
7. Water Board staff collected water samples from residences at 883 and 903 Eloise Avenue on May 24, 2007. The residences are located approximately 500 and 600 feet, respectively, to the north of the Facility and have been adversely impacted by hydrocarbons in the past. The laboratory report showed that the following petroleum constituents were detected in the water sample collected at 883 Eloise Avenue:

Benzene	3.2 micrograms per liter (µg/L)
Toluene	3.2 µg/L
1,2,4-Trimethylbenzene	0.74 µg/L
1,3,5-Trimethylbenzene	0.60 µg/L

8. The concentration of benzene detected in the domestic well at 883 Eloise Avenue exceeds the state primary drinking water standard of 1 µg/L. The property owner of the well was informed of these results in a letter dated June 28, 2007. No hydrocarbons were detected in the water sample taken from 903 Eloise Avenue.
9. On August 13, 2007, the Water Board issued an order to Sarbjit S. Kang to investigate a potential discharge of gasoline to groundwater at the Facility. The order stated that hydrocarbons detected in the domestic well referenced in Finding No. 7 were consistent with a petroleum release occurring after MTBE was phased out of gasoline in California in 2003. The order directed Mr. Kang to collect groundwater samples from all on-site monitoring wells. A technical report containing laboratory results of the water samples was due within 21 days of the date of the order, or by September 3, 2007.
10. On September 27, 2007, the Water Board received a document prepared by CalClean, on behalf of Mr. Kang, containing well sampling results. The document shows that water samples collected from two of the five monitoring wells at the Facility contain high concentrations of petroleum hydrocarbons. Besides benzene, the hydrocarbons included trimethylbenzene, toluene, ethylbenzene, xylenes, and total petroleum hydrocarbons as gasoline. The highest levels of hydrocarbons were detected in a water sample from monitoring well MW-1, taken at 17 feet below ground surface:

Benzene	1,070 µg/L
Toluene	12,600 µg/L

1,2,4-Trimethylbenzene	3,030 µg/L
1,3,5-Trimethylbenzene	751 µg/L
Ethylbenzene	2990 µg/L
Xylenes	15,400 µg/L
Total Petroleum hydrocarbons-gasoline	32,200 µg/L

11. On December 14, 2007, the Water Board Executive Officer issued CAO No. R6T-2007-0029 to Sarbjit S. Kang and Kang Property, Inc. (Attachment B). The Order found that, based on water sample results listed in Findings No. 7 and 10, a new unauthorized release of petroleum hydrocarbons had occurred at the Facility, as indicated by the increase in concentration of volatile organic compounds by two or more orders of magnitude compared to water samples from 2006. The Order noted that lack of MTBE in the water samples suggested that the release occurred after the 2003 phase-out of MTBE in gasoline. The Order also noted that the presence of trimethylbenzene, a highly volatile hydrocarbon that attenuates quickly in the environment, implies the release was relatively recent, given that past monitoring reports to 2001 show that trimethylbenzene was not detected in monitoring wells at the Facility until March 2006.
12. CAO No. R6T-2007-0029 required the Dischargers to take the following cleanup actions: (1) provide alternate water supply to the affected domestic well owner; (2) identify and stop the source of the release, (3) conduct groundwater monitoring and submit technical reports, (4) conduct interim remediation to contain plume migration, (5) investigate the extent of the discharge, and (6) propose clean up of contamination in soil and groundwater. Specifically, the CAO provided, in relevant part:
 - "4. Provide Alternate Water Supply for Affected Domestic Wells
 - 4.1. **By December 19, 2007**, the Dischargers must provide an alternate supply of clean water to the occupants at 883 Eloise Avenue in South Lake Tahoe. The Dischargers must notify the Water Board within one working day of providing the alternate water supply and state how it was achieved.
 - 4.2. **By December 28, 2007**, the Dischargers must submit a technical report to the Water Board describing how it intends to comply with section 4.1 of this Order to provide an alternate supply of clean water to the occupants at 883 Eloise Avenue in South Lake Tahoe.
 5. Release Investigation.
 - 5.1. **By December 19, 2007**, submit a letter to the Water Board describing means to investigate the source or cause of petroleum release at the Facility.

- 5.2. **By December 21, 2007**, implement the release investigation. Notify the Water Board within one working day of implementing the investigation.
- 5.3. **By December 24, 2007**, abate any and all releases from the facility.
- 5.4. **By December 27, 2007**, submit a technical report to the Water Board describing the release investigation conducted at the Facility.

6. Groundwater Monitoring and Reporting

Groundwater monitoring and reporting required in this Order supersedes that required in CAO No. 6-98-78A1.

- 6.1. **Beginning December 30, 2007 and every three months thereafter**, conduct groundwater sampling at all on-site and off-site monitoring and extraction well locations associated with the Facility: MW-1 to 13, EW-1 to 5. Also collect water samples from all drinking water wells within 1,000 feet of the Facility, subject to permission by the property owners: Lukins No. 3 Well, 883 Eloise Avenue, and 903 Eloise Avenue.
- 6.2. **Beginning February 20, 2008**, and every three months thereafter, submit a technical report to the Water Board describing groundwater monitoring results for the prior quarter.

7. Interim Remediation

- 7.1. **By December 31, 2007**, submit a workplan to the Water Board proposing interim remediation to contain the petroleum plume in groundwater from migration. At a minimum, this workplan must propose restarting the groundwater pump and treat system or another equally effective method for containing the petroleum plume in groundwater from migration.
- 7.2. **By January 15, 2008**, implement the interim remediation workplan, as accepted by Water Board staff, for containing plume migration in groundwater. Notify the Water Board within one working day of implementing this action.
- 7.3. **By February 28, 2008**, submit a technical report to the Water Board that describes interim remediation conducted at the site in accordance with the workplan accepted by Board staff. List the start date and time and initial volume or rate of the remediation method.

8. Contaminant Investigation

- 8.1. **By February 15, 2008**, submit a workplan to the Water Board that is designed to determine the lateral and vertical extent of petroleum hydrocarbons in soil and groundwater due to the release at the Facility.
 - 8.2. **By March 15, 2008**, implement the site investigation workplan, as accepted by Water Board staff, for determining the extent of contamination in soil and groundwater. Notify the Water Board within one working day of implementing the investigation.
 - 8.3. **By May 5, 2008**, submit a technical report to the Water Board that describes the soil and groundwater investigation conducted at the site in accordance with the workplan accepted by Board staff.
13. On January 30, 2008, the Water Board Executive Officer issued a Notice of Violation to the Dischargers for violation of CAO No. R6T-2007-0029 (Attachment C). The Notice states that the Dischargers have violated eight directives and have complied with only one directive in the CAO. The Notice informed the Dischargers that continued violation of the CAO would result in enforcement actions against them.
 14. On June 9, 2008, the Water Board received the First Quarter 2008 Groundwater Monitoring Report. The Report states that groundwater sampling was conducted on March 5, 2008 at seven of the thirteen monitoring locations listed in CAO No. R6T-2007-0029. Six locations could not be sampled due to snowpiles. The Report states that no detectable levels of petroleum hydrocarbons were found in six monitoring well locations and the domestic well at 883 Eloise Avenue. The Report concludes there was no longer evidence of the prior unauthorized release at the site. No monitoring report was received for fourth quarter 2007.
 15. As of November 10, 2008, the Dischargers have violated 13 of 16 CAO directives, as discussed in further detail below:

Directive No. 4.1. – Dischargers did not provide alternate supply of clean water to the occupants at 883 Eloise Avenue. The period of non-compliance ended on June 9, 2008, **173 days** past the deadline of December 19, 2007, when the Water Board received the First Quarter 2008 monitoring report that contained monitoring well results showing non-detect levels of hydrocarbons at all sampling locations. Since the report indicated that groundwater was no longer affected by the discharge from the Facility, an alternate supply of clean water was no longer required. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13350.

Directive No. 4.2 – Dischargers did not submit a technical report regarding the alternate supply of clean water. The period of non-compliance ended on June 9,

2008, **164 days** past the deadline of December 28, 2007, when the Water Board received the First Quarter 2008 monitoring report that contained monitoring well results showing non-detect levels of hydrocarbons at all sampling locations. Since the report indicated that groundwater was no longer affected by the discharge from the Facility, an alternate supply of clean water was no longer required and there was no longer a need for the report. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 5.1. – Dischargers failed to submit a letter proposing to investigate the release until August 15, 2008, **240 days** past the deadline of December 19, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 5.2. – Dischargers failed to implement the release investigation, as required, until August 26, 2008, **249 days** past the deadline of December 21, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No 5.3. – Dischargers failed to abate any and all releases from the Facility. The period of non-compliance ended on August 26, 2008, **246 days** past the deadline of December 24, 2007, when the Enhanced Leak Detection test was completed that showed the system was no longer leaking. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13350.

Directive No. 5.4. – Dischargers failed to submit a technical report to the Water Board describing the release investigation conducted at the Facility until September 11, 2008, **259 days** past the deadline of December 24, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.1. – Dischargers failed to implement groundwater monitoring at the site until March 5, 2008, **66 days** past the deadline of December 30, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.2. – Dischargers failed to submit the Fourth Quarter 2007 groundwater monitoring report required pursuant to Directive 6.2. The period of non-compliance ended on May 20, 2008, **89 days** past the deadline of February 20, 2008, when the next quarterly monitoring report was due. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.2. – Dischargers failed to submit the First Quarter 2008 monitoring report required pursuant to Directive 6.2 until June 9, 2008, **20 days** past the deadline of May 20, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 7.2. – Dischargers failed to implement the interim remediation workplan, as required pursuant to Directive 7.2. The period of non-compliance ended on June 9, 2008, **146 days** past the deadline of January 15, 2008, when the Water Board received the First Quarter 2008 monitoring report that contained monitoring well results showing non-detect levels of hydrocarbons at all sampling locations. Since the report indicated that groundwater was no longer affected by the discharge from the Facility, remediation was no longer required. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13350.

Directive No. 7.3. – Dischargers failed to submit a technical report describing interim remediation. The period of non-compliance ended on June 9, 2008, **102 days** past the deadline of February 28, 2008, when the Water Board received the First Quarter 2008 monitoring report that contained monitoring well results showing non-detect levels of hydrocarbons at all sampling locations. Since the report indicated that groundwater was no longer affected by the discharge from the Facility, remediation and a report describing the remediation was no longer required. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 8.1. – Dischargers failed to submit a workplan describing means to investigate the extent of petroleum contamination in soil and groundwater at the Facility, until August 28, 2008, **195 days** past the deadline of February 15, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 8.2. – Dischargers failed to implement a site investigation, as required pursuant to Directive 8.2, until October 6, 2008, **205 days** past the deadline of March 15, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 8.3. – Dischargers failed to submit a technical report describing results of the site investigation until November 10, 2008, **189 days** past the deadline of May 5, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

16. With the submittal of the site investigation technical report on November 10, 2008, the Dischargers were in compliance with all directives in CAO R6T-2007-0029.

PROPOSED CIVIL LIABILITY

17. Civil Liability – California Water Code

Any person who violates any cleanup and abatement order shall be liable civilly, and remedies may be proposed. The Water Board may impose civil liability in an

amount up to that specified by the Water Code. Section 13350, subdivision (e)(1) states, in part:

“(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(A) When there is a discharge and a cleanup and abatement order is issued...the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.”

Any person failing or refusing to furnish technical or monitoring program reports as required of section 13267, is guilty of a misdemeanor and may be liable civilly in accordance with section 13268. Section 13268, subdivision (b)(1) states:

“(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”

a. The Dischargers violated two requirements under directive No. 4 in CAO No. R6T-2007-0029.

i. The maximum amount of civil liability for violation of directive No. 4.1 of the CAO under Water Code section 13350, subdivision (e)(1) is \$865,000 for 173 days of violations. This maximum administrative civil liability is based upon:

$(173 \text{ days of violations of directive No. 4.1}) \times (\$5,000/\text{day of violation}) =$
\$865,000

ii. The maximum amount of civil liability for violation of directive No. 4.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$164,000 for 164 days of violations. This maximum administrative liability is based upon:

$(164 \text{ days of violations of directive No. 4.2}) \times (\$1,000/\text{day of violation}) =$
\$164,000

b. The Dischargers violated four requirements under directive No. 5 in CAO No. R6T-2007-0029.

- i. The maximum amount of civil liability for violation of directive No. 5.1 of the CAO under Water Code section 13268, subdivision (b)(1) is \$240,000 for 240 days of violations. This maximum administrative liability is based upon:

$$(240 \text{ days of violations of directive No. 5.1}) \times (\$1,000/\text{day of violation}) = \text{\$240,000}$$

- ii. The maximum amount of civil liability for violation of directive No. 5.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$249,000 for 249 days of violations. This maximum administrative civil liability is based upon:

$$(249 \text{ days of violations of directive No. 5.2}) \times (\$1,000/\text{day of violation}) = \text{\$249,000}$$

- iii. The maximum amount of civil liability for violation of directive No. 5.3 of the CAO under Water Code section 13350, subdivision (e)(1) is \$1,230,000 for 246 days of violations. This maximum administrative civil liability is based upon:

$$(246 \text{ days of violations of directive No. 5.3}) \times (\$5,000/\text{day of violation}) = \text{\$1,230,000}$$

- iv. The maximum amount of civil liability for violation of directive No. 5.4 of the CAO under Water Code section 13268, subdivision (b)(1) is \$259,000 for 259 days of violations. This maximum administrative liability is based upon:

$$(259 \text{ days of violations of directive No. 5.4}) \times (\$1,000/\text{day of violation}) = \text{\$259,000}$$

- c. The Dischargers violated two requirements on three occasions under directive No. 6 in CAO No. R6T-2007-0029.

- i. The maximum amount of civil liability for violation of directive No. 6.1 of the CAO under Water Code section 13268, subdivision (b)(1) is \$66,000 for 66 days of violations. This maximum administrative civil liability is based upon:

$$(66 \text{ days of violations of directive No. 6.1}) \times (\$1,000/\text{day of violation}) = \text{\$66,000}$$

- ii. The maximum amount of civil liability for the first violation of directive No. 6.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$89,000 for 89 days of violations. This maximum administrative liability is

based upon:

(89 days of violations of directive No. 6.2) x (\$1,000/day of violation) =
\$89,000

- iii. The maximum amount of civil liability for the second violation of directive No. 6.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$20,000 for 20 days of violations. This maximum administrative liability is based upon:

(20 days of violations of directive No. 6.2) x (\$1,000/day of violation) =
\$20,000

- d. The Dischargers violated two requirements under directive No. 7 in CAO No. R6T-2007-0029.

- i. The maximum amount of civil liability for violations of directive No. 7.2 of the CAO under Water Code section 13350, subdivision (e)(1) is \$730,000 for 146 days of violations. This maximum administrative civil liability is based upon:

(146 days of violations of directive No. 7.2) x (\$5,000/day of violation) =
\$730,000

- ii. The maximum amount of civil liability for violations of directive No. 7.3 of the CAO under Water Code section 13268, subdivision (b)(1) is \$102,000 for 102 days of violations. This maximum administrative liability is based upon:

(102 days of violations of directive No. 7.3) x (\$1,000/day of violation) =
\$102,000

- e. The Dischargers violated three requirements under directive No. 8 in CAO No. R6T-2007-0029.

- i. The maximum amount of civil liability for violations of directive No. 8.1 of the CAO under Water Code section 13268, subdivision (b)(1) is \$195,000 for 195 days of violations. This maximum administrative liability is based upon:

(195 days of violations of directive No. 8.1) x (\$1,000/day of violation) =
\$195,000

- ii. The maximum amount of civil liability for violations of directive No. 8.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$205,000

for 205 days of violations. This maximum administrative civil liability is based upon:

$$(205 \text{ days of violations of directive No. 8.2}) \times (\$1,000/\text{day of violation}) = \\ \mathbf{\$205,000}$$

- iii. The maximum amount of civil liability for violations of directive No. 8.3 of the CAO under Water Code section 13268, subdivision (b)(1) is \$189,000 for 189 days of violations. This maximum administrative liability is based upon:

$$(189 \text{ days of violations of directive No. 8.3}) \times (\$1,000/\text{day of violation}) = \\ \mathbf{\$189,000}$$

The cumulative maximum administrative civil liability for violations of Order Nos. 4 – 8 of CAO No. R6T-2007-0029 is **\$4,603,000**.

18. Factors Affecting the Amount of Civil Liability

Water Code section 13327 requires the Water Board to consider enumerated factors when it determines the amount of civil liability assessed pursuant to Water Code sections 13268 and 13350. The Assistant Executive Officer of the Water Board considered those factors in recommending the amount of the administrative civil liability:

- a. The nature, circumstances, extent, and gravity of the violations;

Violating a CAO, classified as a “formal” enforcement action by the Water Quality Enforcement Policy, is a serious offense. Violating directive No. 4 of CAO No. R6T-2007-0029 prevented the occupants of 883 Eloise Avenue from using and enjoying water from their domestic well. Violating directive No. 5 of the CAO prevented Water Board staff from finding out the source or cause of the petroleum release adversely affecting water quality, as referenced in Allegation No. 10. The Dischargers’ violation of directive No. 6 prevented knowledge of the fate and migration of petroleum hydrocarbons detected beneath the Facility for nine months following submittal of the September 27, 2007 groundwater report. Violation of directive No. 7 prevented abatement and containment of hydrocarbons in groundwater beneath the Facility and sooner enjoyment of beneficial uses located in the downgradient flow direction. Finally, the Dischargers’ violation of directive No. 8 prevents Water Board staff from knowing if petroleum products that could affect water quality in the future remain in the vadose zone at the Facility. As a result of failing to comply with these five directives, staff has needed to conduct verification well sampling at the Facility and at 883 Eloise Avenue, which diverts resources away from other Water Board work.

b. Whether discharge is susceptible to cleanup or abatement;

The discharge of petroleum products to groundwater is susceptible to abatement. For a past release at the Facility, the operator arranged for a carbon canister to be plumbed to the domestic well at 883 Eloise Avenue to remove petroleum hydrocarbons from the well water. A pump and treat system exists at the Facility from prior contamination and could have been re-started to contain plume migration from threatening other beneficial uses besides the affected domestic well at 883 Eloise Avenue. In addition, the Dischargers proposed implementing interim remediation by use of portable high vacuum dual-phase extraction equipment. This proposal was conditionally accepted by Water Board staff on January 8, 2008. As of June 9, 2008, when the First Quarter 2008 Monitoring Report was received, the Dischargers had not taken corrective action to abate or contain petroleum hydrocarbons from migration in groundwater.

c. The degree of toxicity of the discharge;

Groundwater at the site contained gasoline-range petroleum hydrocarbons and known toxic volatile organic carbons, including benzene, toluene, ethylbenzene, xylenes, and trimethylbenzenes. Concentrations of these petroleum constituents in groundwater exceed drinking water standards and public health goals. Levels of benzene in groundwater at the Facility and the domestic well at 883 Eloise Avenue exceed the one-in-a-million risk level for cancer. Since no corrective action was taken by the Dischargers, the fate and migration of the petroleum constituents in groundwater is unknown.

d. Ability to pay;

In addition to the Facility, Kang Property, Incorporated currently owns property zoned for use as service stations at:

- 1140 Emerald Bay Road, South Lake Tahoe, CA (APN 023-181-191 & APN 032-141-3510)
- 7920 Brentwood Boulevard, Brentwood, CA (APN 016-150-025-1)
- 425 Moraga Road, Moraga, CA (APN 256-070-001-1)
- 4480 Chiles Road, Davis, CA (APN 069-070-10-1)
- 4949 County Road 89, Yolo County, CA (APN 052-020-04-1)
- 4300 Watt Avenue, Sacramento, CA (APN 240-0232-058-0)

Kang Property, Incorporated also owns the following property:

- 1122 Emerald Bay Road, South Lake Tahoe, CA (APN 032-141-041 [vacant lot])

Given the assets described above, it appears the Dischargers are able to pay the liability.

- e. The effect on the Dischargers' ability to continue its business;

Water Board staff is not aware of any reason that the Dischargers' ability to continue their business would be affected by the proposed liability. The Dischargers own and operate multiple gas stations in California.

- f. Any voluntary cleanup efforts undertaken by the violator;

To date, the Dischargers have only implemented corrective actions at the site when ordered to by the Water Board in CAO No. R6T-2007-0029 and Water Code section 13267 orders.

- g. Prior history of violations;

Sarbjit S. Kang has a history of violations in complying with directives for clean up at the Facility and another facility. This history is summarized in the table below. In 1999, the Lahontan Water Board issued Administrative Civil Liability Order No. 6-99-46 to Mr. Kang and other parties in the amount of \$95,000 for non-compliance with Amended CAO 6-98-78A1. The Water Board stayed \$63,750 of the total amount after Mr. Kang implemented remediation tasks at the site. Of the remaining liability still owed, \$1,993 was collected in 2008 when the Attorney General's Office initiated a till tax at one of Mr. Kang's other gas stations. Liability in the amount of \$29,257 was never paid and is still owed. Also in 1999, the Lahontan Water Board issued Administrative Civil Liability Order No. 6-99-47 to Mr. Kang and other parties in the amount of \$59,000 for non-compliance with other directives in Amended CAO 6-98-78A1. The Water Board stayed \$33,150 of the total amount following Mr. Kang's completion of certain cleanup actions. Liability in the amount of \$25,850 was never paid and is still owed. Civil liabilities in both Orders were assessed at the rate of \$1,000 per day of violation. Furthermore, in 1999, the Lahontan Water Board issued Administrative Civil Liability Order No. 6-99-50 to Mr. Kang and another party in the amount of \$112,500 for non-compliance with a cleanup and abatement order at another gas station in which Mr. Kang was the operator. The full civil liability was paid in 2008 when the Attorney General's Office implemented a till tax upon one of Mr. Kang's other gas stations.

	Site	Amount	Status
ACL 6-99-46	Swiss Mart	\$95,000: \$63,750 stayed \$31,250 owed	\$1,993 paid in 2008 from AG office till tax; \$29,257 unpaid
ACL 6-99-47	Swiss Mart	\$59,000: \$33,150 stayed \$25,850 owed	\$25,850 unpaid
ACL 6-99-50	Meyers Beacon	\$112,500	Paid in 2008 from AG office till tax action

h. Degree of culpability;

Sarbjit S. Kang and Kang Property, Inc. are identified as the "Dischargers" by CAO No. R6T-2007-0029 and, thus, are ultimately responsible for compliance with CAO No. R6T-2007-0029, and applicable state laws and regulations. Despite issuance of a Notice of Violation on January 30, 2008 and repeated contacts between Water Board staff and the Dischargers' consultant, during which violations were discussed, the Dischargers failed to comply with applicable requirements.

i. Economic savings resulting from the violation;

Water Board staff has calculated the Discharger's cost savings associated with violating the CAO. The nature of such cost savings would be "avoided costs" and "delayed costs." Avoided costs include those associated with quarterly monitoring and reporting, conducting interim remediation, and providing replacement drinking water for the residence at 883 Eloise Avenue. Estimated avoided costs are \$37,000. Delayed cost savings would be the potential interest earned on the delayed costs, which given the short violation period addressed by this Complaint would be small and substantially less than the proposed liability.

j. Other matters as justice may require.

Staff Costs

Staff from the State and Regional Boards have spent time responding to the incident and preparing the Administrative Civil Liability Complaint. Estimated staff costs for investigation and complaint preparation are **\$37,059**.

19. Amount of Civil Liability

The Assistant Executive Officer of the Water Board considered the above factors and proposes that administrative civil liability be imposed by the Water Board at a rate of \$500 per day for a total of 565 days of violation of Water Code section 13304

and at a rate of \$100 per day for a total of 1,778 days of violation of Water Code section 13267 for a total amount of **\$460,300**.

WAIVER OF HEARING

You may waive the right to a hearing. Waiver of your right to a hearing constitutes acceptance of the assessment of civil liability in the amount set forth within the Complaint. If you wish to waive your right to a hearing, an authorized person must sign the Waiver of Hearing form prepared for this Complaint, and submit it to the address below.

Lahontan Regional Water Quality Control Board
Attn: Robert S. Dodds, Assistant Executive Officer
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

Please note that any settlement will not be effective until reasonable opportunity for public participation has been provided pursuant to title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) and the State Water Board's 2002 Enforcement Policy. The Water Board will notify interested persons of any proposed settlement for and will solicit comments on the settlement for a period of thirty (30) days. Any settlement will not become final until after the public comment period.

Payment of the liability will be due within 30 days of the settlement becoming final. Payment must be made with a cashier's check or money order made payable as follows:

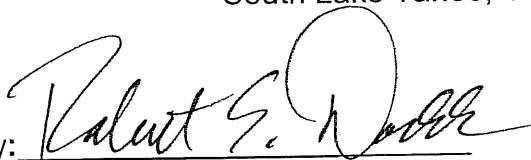
\$282,500 to the State Water Resources Control Board, Waste Discharge Permit Fund.

\$177,800 to the State Water Resources Control Board, Cleanup and Abatement Account.

Send your remittance to:

Lahontan Regional Water Quality Control Board
Attn: Robert S. Dodds, Assistant Executive Officer
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

Ordered by:



Robert S. Dodds
Assistant Executive Officer

Dated: April 15, 2009

Attachments: A. Site Vicinity Map
 B. Cleanup and Abatement Order No. R6T-2007-0029
 C. January 30, 2008 Notice of Violation

LSD/clhT: Swiss Mart CAO Violations ACL-Complaint 4-09